IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

CRP.No. 731 of 2003()

AGAINST THE ORDER IN IA.1259/2002 IN OS.25/2001 of MUNSIFF COURT,MUVATTUPUZHA
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REVN. PETITIONER: PLAINTIFF

JOSEPH, S/O.MATHAI,
AGED 65 YEARS, PURAKKATTIL HOUSE,
PANAVAMPADY BHAGOM, VADATTUPARA.

BY ADV. SRI.A.T.ANILKUMAR
SRI.P.A.SIRAJUDHEEN

RESPONDENTS: DEFENDANTS
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1. **MATHAI, S/O.KURIAKOSE, AGED 30 YEARS, BUS CONDUCTOR, RESIDING AT KULANGATTIL HOUSE, PANAVAMPADY BHAGOM, VADATTUPARA, KUTTAMPUZHA VILLAGE, KOTHAMANGALAM TALUK.**

2. **KURIAKOSE, S/O.THOMAS, AGED 60 YEARS, KULANGATTIL HOUSE, PANAVAMPADY BHAGAM, VADATTUPARA, KUTTAMPUZHA VILLAGE, KOTHAMANGALAM TALUK.**

3. **SHAJI, S/O.KURIAKOSE, AGED 32 YEARS, RESIDING AT KULANGATTIL HOUSE, PANAVAMPADY BHAGAM, VADATTUPARA, KUTTAMPUZHA -DO-**

4. **TOMY, S/O.THOMAS, AGED 30 YEARS, RESIDING AT KATTACKAL HOUSE, PANAVAMPADY BHAGAM, VADATTUPARA, KUTTAMPUZHA VILLAGE, KOTHAMANGALAM TALUK.**

5. **ANNAKUTTY, W/O.THOMAS, AGED 60 YEARS, RESIDING AT KULANGATTIL HOUSE, PANAVAMPADY BHAGAM, VADATTUPARA, KUTTAMPUZHA VILLAGE, KOTHAMANGALAM TALUK.**

6. ANTONY, AGED 50 YEARS, RESIDING AT PARACKAL HOUSE, PANAVAMPADY BHAGAM, VADATTUPARA, KUTTAMPUZHA VILLAGE, KOTHAMANGALAM TALUK.

7. M.K.RAMACHANDRAN, AGED 30 YEARS, PANCHAYATH VICE PRESIDENT, RESIDING AT MUNDUPALATHINKAL HOUSE, PANAVAMPADY BHAGAM, VADATTUPARA, KUTTAMPUZHA VILLAGE, KOTHAMANGALAM TALUK.

8. VARKEY, S/O.MATHAI, AGED 55 YEARS, RESIDING AT PURAKKATTU HOUSE, PANAVAMPADY BHAGAM, KUTTAMPUZHA VILLAGE, KOTHAMANGALAM TALUK.

9. STATE OF KERALA, REPRESENTED BY DISTRICT COLLECTOR, CIVIL STATION, KAKKANADU, ERNAKULAM.

R1 TO R9 BY ADV. SRI.V.M.ABHILASH

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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K. VINOD CHANDRAN, J

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C.R.P No.731 of 2007

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Dated this the 11th day of December, 2012

O R D E R

The revision is by the requisitioning authority, which sought the aid of the State Government in acquiring certain lands under the Land Acquisition Act, 1894 for establishment of Cochin Export Processing Zone at Kakkanad. The respondents are the legal heirs of the original land owner. The land acquisition references concluded in a decree dated 22.12.1989 wherein certain enhancements were granted. Subsequently, on appeal, a Division Bench of this Court reduced the compensation amount by a judgment and decree in LAA 351/1994 dated 28.8.1997. The said judgment was passed in a batch of appeals filed by the State Government.

2. Execution petitions were filed for obtaining the amounts awarded by the reference court as modified by the appellate court. In the case of the revision petitioner in EP No.1082/1993, amounts were deposited by the State on

15.10.1994 and 1.9.2000. The entire amounts as per the award being satisfied, the EP was closed on 1.9.2000.

3. Subsequently, the Hon'ble Supreme Court in **Sunder v. Union of India[(2001)7 SCC 211]** considered the issue of grant of interest on solatium and 12% additional market value and found the claimants to be entitled to such interest. Long thereafter, in the year 2003, the respondents again approached the execution court with the present, EP No.176/03, in which, though **Sunder(supra)** was not specifically referred to, the respondents raised a claim for interest on solatium and 12% additional market value from 10.4.1985, i.e, the date of dispossession of the properties. The court below by a cryptic order dated 25.2.2004 fixed the liability. The order dated 25.2.2004 is extracted below:

> "Liability fixed at Rs.16,19,445/-. Attach to 7.4.2004. Take steps."

4. That was challenged by the State as also the requisitioning authority in C.R.P No.822/2004. The revision was disposed of by this Court, extracting the above order and finding that there is absolutely no consideration on merits regarding the computation as also the objections raised by the State and the requisitioning authority. The revision was allowed and the order was set aside directing the learned sub

Judge to take the EP back to the files and dispose of the same afresh, in accordance with law, after considering the objections raised by the State and pass a reasoned(sic.) order. The matter went back to the execution court.

5. The order passed on remand is impugned in the above revision. The order reads thus:-

> "Amount of Rs.4,73,320/- is deposited by Garnishee. The said amount is deposited as fixation of liability as per decree. Thus entire execution petition amount is recovered and is closed accordingly."

6. Obviously, the learned Sub Judge decided to give a go-by to the directions of the High Court. The learned counsel for the respondents, however, strenuously pleaded that in fact there was an earlier order passed fixing the liability. I have gone through the records of the case. The contention of the learned counsel is that the reasoned order was passed on 9.12.2005, fixing the liability. An order has been passed in E.A No. 390 of 2004 in E.PNo.176 of 2003 in LAA No.1140 of 1988 on 9.12.2005 as follows:-

> Balance statement filed. Heard. Liability is fixed at Rs.4,73,320/-(Four lakhs seventy three thousand three hundred and twenty)"

This again discloses no consideration as directed by this Court. A remand would have best suited in the circumstance

revealed so far, in the above case. However, the learned counsel appearing for the respondent would seek for a finality to the proceedings by this Court in view of the latter judgment of the Hon'ble Supreme Court by a larger Bench in **Gurupreet Singh v. Union of India, [2006(8) SCC 457].**

7. Before this Court also, a batch of revision petitions filed by the State wherein the question of interest on solatium and 12% additional market value were referred to a Division Bench. When the said revisions were pending the Hon'ble Supreme Court passed the judgment in **Sunder** and then **Gurupreet Singh(supra)**. The Division Bench of this Court by order dated 20.9.2010 held that, the issue is no more res integra, in view of the decision reported in **Sunder (supra),** and **Gurupreet Singh (supra).** The Division Bench specifically referred to the finding of the Larger Bench of the Hon'ble Supreme Court in **Gurupreet Singh** (supra), which was as follows:

> "That question is whether in the light of the decision in **Sunder**, the awardee/decree holder would be entitled to claim interest on solatium in execution though it is not specifically granted by the decree. It is well settled that an execution court cannot go behind the decree. If, therefore, the claim for interest on solatium had been made and the

same has been negatived either expressly or by necessary implication by the judgment or decree of the Reference Court or of the appellate Court, the execution court will have necessarily to reject the claim for interest on solatium based on **Sunder** on the ground that the execution court cannot go behind the decree. But if the award of the Reference Court or that of the appellate court does not specifically refer to the question of interest on solatium or in cases where claim had not been made and rejected either expressly or impliedly by the Reference Court or the appellate court, and merely interest on compensation is awarded, then it would be open to the execution court to apply the ratio of **Sunder** and say that the compensation awarded includes solatium and in such an event interest on the amount could be directed to be deposited in execution. Otherwise not. We also clarify that such interest on solatium can be claimed only in pending executions and not in closed executions and the execution court will be entitled to permit its recovery from the date of the judgment in **Sunder** (19.9.2001) and not for any prior period. We also clarify that this will not entail any re-appropriation or fresh appropriation by the decree holder. This we have indicated by way of clarification also in exercise of our power under Articles 141 and 142 of the Constitution of India with a view to avoid multiplicity of litigation on this question”

8. After the judgment of the Supreme Court in **Sunder (supra)**, there were a number of cases in which the claim of interest approved by **Sunder(supra)** was sought to be re-agitated. As is noticed above, in the instant case, the execution petition was closed on 1.9.2000, after the entire amounts pending as on that date was paid. Here, the execution was filed in the year 2003 claiming interest on solatium and 12% additional market value from the date on which the acquired land was taken possession of.

9. The learned counsel appearing for the revision petitioner/requisitioning authority urges for a finding from this Court and specifically argues against the remand on the ground that the same would turn futile. It is the submission of the learned counsel that in many of the cases in which remand is ordered by this Court, the money would have been withdrawn by the claimants as deposited by the State or by the Garnishee. Invariably after three or four postings; on the submission of the decree holders that they are not pressing the execution petitions; the execution courts mechanically record the submission and close the execution petition. This Court also has in CRP No.1163 of 2001 dated 5.12.2012 held that, that would be against the spirit of the remand, ordered

by this Court, on the revision of the State. This Court has held as follows:-

> The execution Courts have to pass a speaking order to the effect as to which category, as laid down in **Gurupreet Singh** (supra), would the individual execution petition come within and determine the actual amounts due as also ascertain and record excess payment if any made. If not, it would result in gross miscarriage of justice and none can take a complacent attitude, for reason only that the money is of the State. Misplaced sympathies for Decree Holders on account of their having lost their lands, are just that; i.e., out of place since the injury caused, is sought to be remedied by paying compensation, the award of which is scrutinized by a hierarchy of Courts; conferred with powers to enhance or reduce the compensation awarded. The injury also is on account of greater public good and the compensation for such injury flows out from the public exchequer.

10. In the above referred decision, this Court had remanded the matter for consideration as to which category that execution would fall into as enumerated in **Gurupreet Singh** (supra). In the instant case, there can be no dispute, since, it is not the computation or the terms of the decree that assumes relevance. This is a case in which the execution was closed even before **Sunder(supra)** came. **Gurupreet Singh**

(supra) interpreted **Sunder**(**supra**). The Hon'ble Supreme Court clarified that such interest on solatium and 12% additional market value can be claimed only in pending execution matters and not in closed execution proceedings. In any event the execution courts have power to permit recovery of interest only from the date of the judgment in **Sunder (supra)**, i.e, 19.9.2001 and not for any prior period. In the instant case, the execution petition filed by the respondent stood closed on 1.9.2000; long prior to 19.9.2001.

11. The learned counsel for the respondents placed before me two decisions of the Hon'ble Supreme Court which considered the issue of prospective declaration of law being **Sarwan Kumar and another v. Madan Lal Aggarwal(AIR 2003 SC 1475)** and **Baburam v. C.C Jacob (AIR 1999 SC 1845).** Based on the above said decisions the learned counsel for the respondents would urge that **Sunder(supra)** merely declared the law interpreting the provisions of the Land Acquisition Act and it has to be applied retrospectively, from the date of enactment. In **Sarwan Kumar(supra)** the operation of Section 14 of the Delhi Rent Control Act(59 of 1958) which barred civil courts from entertaining any suit or proceeding relating to the eviction of tenants came up for

consideration. The eviction decree was passed by a civil court on the basis of a view taken by the High Court that commercial tenancies were not heritable and such statutory tenancy came to an end with the death of the tenant. That decision of the High Court was overruled as being erroneous by the Supreme Court. It was held that the Supreme Court in the decision which overruled the High Court decision was not laying down any new law, but only interpreting the existing law which was in force. The interpretation of a provision, it was held, relates back to the date of the law itself and cannot be prospective from the date of pronouncement of the judgment.

12. **Baburam(supra)** explained the principle of prospective declaration of law as a devise adopted by the apex Court to avoid uncertainty and avoidable litigation and resorted to in the larger public interest. It was held:-

> "The prospective declaration of law is a devise innovated by the apex court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a devise adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public

> interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by this Court are also duty-bound to apply such dictum to cases which would arise in future only. In matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law. In the instant case, both decisions of the DPC as well as the appointing authority being prior to the judgment in Sabharwal's case(1995 AIR SCW 1371) we are of the opinion that the tribunal was in error in applying his decision.

13. In the light of the binding precedent of a five Judge Bench in **Gurupreet Singh** (**supra**), I am afraid the contention of the learned counsel is to be noticed only to reject it. In fact, principle of prospective declaration of law as explained in **Baburam(supra**) was the principle which was applied in **Gurupreet Singh** (supra) by the larger Bench; when it declared that the law laid down in Sunder(supra) would have only prospective application. In the teeth of the binding precedent of the Supreme Court in **Gurupreet Singh** (supra), I am inclined to agree with the learned counsel for the revision petitioner that a remand is not necessary in the instant case. There is no question of any re-computation to ascertain what amounts were due to the petitioners, in the

instant case. The fresh Execution Petitions were filed only on the claim of interest on solatium and 12% additional market value; as per the dictum in **Sunder(supra). Gurupreet Singh(supra)** found that the law declared in **Sunder(supra)** would have only prospective effect.

14. The first execution petition filed by the decree holder stood closed before Sunder(supra). There can be no re-opening on the basis of Sunder (supra) since Gurupreet Singh(supra) held that closed execution petitions shall not be re-opened and interest, if at all, on that count would run only prospective to 'Sunder', i.e., from 19.9.2001. Hence the decree holder was not entitled to any amounts claimed. On the strength of the discussions above, it is found that the execution petition filed by the respondents before the court below for claiming interest on solatium and 12% additional market value, is not maintainable. The execution court ought to have rejected the same. The impugned order is set aside and the execution proceedings will stand dismissed.

15. In the circumstances of the decree holders/respondents having withdrawn the money deposited by the Garnishee; the State or the requisitioning authority will be entitled to restitution, in accordance with law. For that

limited purpose the matter is remanded back to the execution Court. This Court restrains itself from making any comments on the conduct of the execution court despite the order in CRP No.731 of 2007. The parties shall appear before the court on 30.01.2012 and the execution court shall proceed to order restitution as provided in Section 144 of the Civil Procedure Code.

The Civil Revision Petition is allowed.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

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P.A to Judge